

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 663
Judiciary

(Delegate Lopez, *et al.*)

Civil Actions - Sexual Deepfake Representations and Revenge Porn

This bill authorizes a person to bring and maintain a civil action for defamation *per se* against another who distributes a computer-generated visual representation that is “indistinguishable from an actual visual representation of the person” and falsely depicts the person with his or her intimate parts exposed or engaged in sexual activity. A court may award a prevailing plaintiff punitive damages, attorney’s fees, and injunctive relief from all parties involved. The bill also establishes that a person whose “visual representation” was distributed in violation of § 3-809 of the Criminal Law Article (revenge porn) has a civil cause of action against any person who distributed the visual representation. The court may award actual damages and reasonable attorney’s fees in such an action. Finally, the bill expands an existing provision that limits the inspection of a visual representation of a victim that is part of a court record in a violation of § 3-809 to account for this civil action and plaintiffs or plaintiff’s attorneys.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for the Judiciary to handle additional civil cases, as discussed below. Revenues are not materially affected.

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Indistinguishable from an actual visual representation of the person” means that an ordinary person would conclude that the visual representation is an actual

visual representation of the person. It includes a computer-generated visual representation that has been created, adapted, or modified to appear genuine, but does not include images or items depicting a person that are drawings, cartoons, sculptures, or paintings.

The bill specifies that a “visual representation” under § 3-809 includes a photograph, a film, a video, a digital image, a picture, or a computer-generated image or picture, whether made or produced by electronic, mechanical, or other means.

Current Law: Section 3-809 of the Criminal Law Article prohibits a person from knowingly distributing a visual representation of another identifiable person that displays the other person with his or her intimate parts exposed or while engaged in an act of sexual activity (1) with the intent to harm, harass, intimidate, threaten, or coerce the other person; (2) under circumstances in which the person knew that the other person did not consent to the distribution or with reckless disregard as to whether the person consented to the distribution; and (3) under circumstances in which the other person had a reasonable expectation that the image would remain private. The State may institute a prosecution for a violation of § 3-809 at any time. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$5,000 maximum fine.

The prohibition does not apply to (1) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings or (2) situations involving voluntary exposure in public or commercial settings. An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is not liable for content provided by another person.

A visual representation of a victim that is part of a court record in a case prosecuting revenge porn may not be available for public inspection and, except as otherwise ordered by the court, may only be made available to specified individuals for inspection in relation to a criminal charge for revenge porn.

State Expenditures: The Judiciary did not respond to a request for an estimate on the fiscal and operational impact of the bill. However, with respect to similar legislation that authorized similar civil actions, the Judiciary advised that depending on case volume, additional resources may be needed to address civil cases filed under the bill. According to the Judiciary, 391 *criminal actions* (293 in the District Court and 98 in the circuit courts) under § 3-809 of the Criminal Law Article (revenge porn) were filed in the State’s trial courts during fiscal 2024. The Judiciary cautions that these cases do not include unreported acts, which may be the basis for civil actions under the bill. However, the Department of Legislative Services advises that while the bill may address activity that occurs fairly frequently, given the resources needed by an aggrieved party to bring a civil suit, and considering the overall civil caseloads of the courts, any potential additional expenditures for the Judiciary solely attributable to the bill are likely to be minimal.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1062 of 2024.

Designated Cross File: None.

Information Source(s): Baltimore, Cecil, Frederick, and Montgomery counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Department of Public Safety and Correctional Services; Department of Legislative Services

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